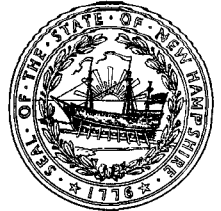




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Kenneth J. Wlinich )  
173 Green Mountain Road )  
Effingham, NH )  
\_\_\_\_\_ )

**ADMINISTRATIVE ORDER**

No. WMD 06-003

January 25, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Kenneth J. Wlinich pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Kenneth J. Wlinich is an individual having a mailing address of 173 Green Mountain Road, Effingham, NH 03882.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 149-M authorizes DES to regulate the management of solid waste in the State of New Hampshire. RSA 149-M:7 authorizes the Commissioner of DES to adopt rules to implement solid waste management standards. Pursuant to this authority, the Commissioner has adopted Env-Wm 100-300 and Env-Wm 2100-3700 ("Solid Waste Rules").
2. Kenneth J. Wlinich is the former owner of a residence and property located at 167 Green Mountain Road, Effingham, NH which he sold to John and Debra Mello on or about May 20, 2005.
3. On May 25, 2005, DES personnel received a complaint from the New Hampshire Department of Resources and Economic Development, Division of Forest and Lands, alleging that solid waste had been illegally disposed in the Pine River State Forest.
4. On May 25, 2005, DES personnel initiated an investigation of the allegation of illegal disposal of solid waste in the Pine River State Forest.
5. During the May 25, 2005 investigation, DES personnel observed a location in the Pine River State Forest with coordinates of N 43 degrees, 42 minutes, 58.0 seconds; W 71 degrees, 4 minutes, 3.2 seconds and off of Drake Road, Effingham, New Hampshire ("the

Site”) where solid waste had been disposed. The solid waste consisted of mail, magazines, news papers, food residue, putrescible garbage, clothing, mattress pads, business paperwork for Cameron Restaurant Services in a metal portfolio, a business check book for Cameron Restaurant Services, and personal paperwork of Kenneth Wlinich. The most recent newspaper observed was a copy of the Carroll County Independent, dated May 5, 2005.

6. RSA 149-M:4, XXII defines “solid waste” as “any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material.”

7. RSA 149-M:4, XXI defines “refuse” in part, as “any waste product.... which is composed wholly or partly of such materials as brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”

8. The mail, magazines, news papers, food residue, putrescible garbage, clothing, mattress pads, business paperwork for Cameron Restaurant Services in a metal portfolio, business check book for Cameron Restaurant Services, and personal paperwork of Kenneth Wlinich observed by DES personnel at the Site on May 25, 2005 are solid waste as defined by RSA 149-M:4XXII.

9. During the May 25, 2005 investigation, DES personnel observed mail and personal paperwork with the following names and addresses:

Mary A. Bianchi, P. O. Box 143, Ossipee, NH 03864-0143  
Jim Cameron Restaurant Services, P. O. Box 195, Ossipee, NH 03864  
Kenneth J. Wlinich, 167 Green Mountain Road, Center Ossipee, NH 03814  
Ruth Gibson, P. O. Box 143, Ossipee, NH 03864-0143  
Mary Wlinich, 167 Green Mountain Road, Effingham, NH (UPS label)  
Jon Bianchi, P. O. Box 143, Ossipee, NH 03864-0143.

This material was photographed and collected as Sample No. MEG 602.

10. On June 1, 2005, DES personnel interviewed Ms. Debra Mello at her residence at 167 Green Mountain Road, Effingham, New Hampshire. DES personnel learned that she and her husband purchased the residence from Kenneth Wlinich on or about May 20, 2005. DES personnel also learned that there was trash inside the house which was to have been removed by Mr. Wlinich the day before the closing, Thursday, May 19, 2005.

11. On June 1, 2005, DES personnel interviewed Ms. Claudia Lamphier, Effingham Selectman’s Assistant. DES personnel learned that the local solid waste transfer facility is opened only on Wednesday, Saturday and Sunday.

12. On June 1, 2005, DES personnel interviewed Ms. Donna Pratt, a realtor with Re/Max Presidential Real Estate, who was the broker representing Mr. Wlinich in the sale of the property at 167 Green Mountain Road, Effingham, New Hampshire. DES personnel learned that on the day prior to the closing, there was trash consisting of clothing, food, and household and personal items inside the house, but that this solid waste was no longer present on the day of closing. Ms. Pratt stated that on the night prior to the closing, Mr. Wlinich called her and stated that he was removing the trash inside the house and had made four trips to the local solid waste transfer facility. DES personnel also learned that Attorney Peter Cole of Helm & Cole of Ossipee, New Hampshire was representing Mr. Wlinich in a matter relating to the property sale.

13. On June 8, 2005, DES personnel interviewed Mr. James Cameron. DES personnel learned that Mr. Cameron's truck was broken into and burglarized. Among the items reported stolen was a checkbook and metal portfolio with work receipts; both of which had his business name printed on them. DES personnel also learned that the New Hampshire State Police were investigating the burglary.

14. On June 8, 2005, DES personnel spoke to Attorney Peter Cole by phone. Attorney Cole stated that he did represent Mr. Wlinich in a matter, but only had an address for Mr. Wlinich. Attorney Cole agreed to send a letter to Mr. Wlinich advising him that DES personnel were trying to contact him and how to reach DES personnel.

15. On June 16, 2005, DES personnel met with Trooper Clint Trussell of the New Hampshire State Police at the Troop E barracks in Ossipee, New Hampshire. DES personnel learned that Trooper Trussell was investigating the burglary of Mr. Cameron's truck and that the items reported stolen, other than tools, matched what DES personnel had found in the Pine River State Forest. DES personnel also learned that Mary and Jon Bianchi had lived with Kenneth Wlinich for a period of time, and that Mary Wlinich is believed to be the mother of Kenneth Wlinich.

16. On November 17, 2005, DES personnel talked with Trooper Trussell, NHSP and learned that Trooper Trussell had advised Mr. Wlinich that he should contact DES personnel.

17. On November 17, 2005, DES called Mr. Wlinich, using a phone number provided by Trooper Trussell. There was no answer, but DES personnel left a message on Mr. Wlinich's answering machine, requesting a call back in a matter relating to solid waste disposed in the Pine River State Forest.

18. Despite attempts to contact Mr. Wlinich via his attorney, NH State Police, and phone messages, DES personnel have not been contacted by Mr. Wlinich.

19. RSA 149-M:4, IX defines a "[solid waste] facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

20. The Site constitutes a "solid waste facility" as defined by RSA 149-M:4, IX.
21. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."
22. A review of DES files show that Kenneth Wlinich has not applied for or holds a permit to operate a solid waste facility at any New Hampshire location.
23. RSA 149-M:9, II states that "It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility."
24. A review of DES files shows that the Site is not an approved facility for the disposal of solid waste.

#### **D. DETERMINATION OF VIOLATIONS**

1. Kenneth Wlinich has violated RSA 149-M:9, I by operating an un-permitted solid waste facility.
2. Kenneth Wlinich has violated RSA 149-M:9, II by transporting and disposing solid waste to and at an un-permitted facility.

#### **E. ORDER**

Based on the above findings, DES hereby orders Kenneth Wlinich as follows:

1. **Immediately** cease operating an un-permitted solid waste facility.
2. **Immediately** cease transporting and disposing solid waste to and at an un-permitted facility.
3. **By February 17, 2006**, remove all solid waste from the Site and dispose of it at a permitted solid waste facility.
4. **By February 24, 2006**, submit a written status report to DES, certifying that corrective measures have been implemented and compliance achieved. Include in the report supporting documentation describing those measures taken to achieve compliance, **including copies of disposal receipts.**
5. Send correspondence, data, reports, and other submissions, including copies of disposal receipts, made in connection with this Administrative Order, **other than appeals**, to DES as follows:

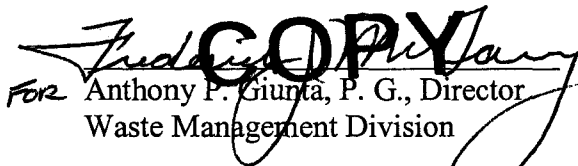
Michael E. Galuszka  
Department of Environmental Services  
Spill Response & Complaint Investigation Section  
80 Glen Road  
Gorham, NH 03581  
Telephone: (603) 466-5389  
Fax: (603) 466-5148  
e-mail: [mgaluszka@des.state.nh.us](mailto:mgaluszka@des.state.nh.us)

#### F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Kenneth Wlinich of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 149-M provides for civil and criminal penalties and administrative fines for violations of the statute or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 149-M:15 provides for civil forfeitures of up to \$25,000 for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against Kenneth Wlinich, including referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. DES reserves the right to pursue administrative penalties for the violations noted above.

 **COPY**  
For Anthony P. Giunta, P. G., Director  
Waste Management Division

 **COPY**  
Michael P. Nolin, Commissioner

Certified Mail/RRR: 7000 1670 0000 0585 4362

cc: File/DB  
Gretchen Hamel, DES Legal Unit  
Public Information Officer, DES PIC Office  
Jennifer Patterson, Sr. Assistant Attorney General  
Clifton A. Trussell, NH State Police  
Robert Hardy, DRED  
Town of Effingham